IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

Crl.RC.No. 2 of 2002(E)

PARTIES :
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1. STATE OF KERALA
   REPRESENTED BY PUBLIC PROSECUTOR

   BY PUBLIC PROSECUTOR SRI.AMJAD ALI

2. C.K.MUHAMMED
   JASMINE STORE SHOPPING CENTRE
   CHEERAL POST.

   BY ADV. SRI.LALJI P.THOMAS

THIS CRIMINAL RIVISION CASE HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.C.No. 2 of 2002

Dated this the 17th day of August, 2007

O R D E R

The matter was taken up in suo moto revision over the order of the appellate court in C.C.No.258/93 with respect to the offence under Section 138 of the Negotiable Instruments Act.

2. The complainants case is that the accused had borrowed a sum of Rs.9,000/- and towards the discharge of the above liability the impugned cheque was issued which when presented got dishonoured for want of funds in the account of the accused. No reply was received to the lawyer notice sent nor was any amount paid. The trial court convicted and sentenced him to undergo simple imprisonment for six months and to pay a fine of Rs.15,000/- and in default, to undergo simple imprisonment for three months and out of the fine amount, if realised, Rs.11,500/- is ordered to be given to PW1 vide Section 357 Crl.P.C. But the appellate court upheld the conviction and set aside the sentence imposed as the Magistrate is not having the power to impose a fine of Rs.15,000/-. I find that the lower appellate court was erred

in setting aside the sentence imposed by the trial court without remitting the matter back to the trial court for imposing the appropriate sentence. The matter is of the year 1993.

3. In the circumstances, the conviction is confirmed and the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.12,000/- to PW1 and in default, to undergo simple imprisonment for one month. The accused shall appear before the Judicial First Class Magistrate Court, Sulthan Batheri on 8.10.2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl